THE HON'BLE MR JUSTICE V.V.S.RAO

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WRIT PETITION No.24035 of 2005

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Dated:10.11.2005

Between:

G.Janakamma, W/o.Rami Reddy,
R/o.Dhamsalapuram Village, Khammam District, and others.

..... PETITIONERS

AND

The Commissioner of Land Revenue, Hyderabad, and others.

.....RESPONDENTS

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION No.24035 of 2005

ORDER:

The petitioners claim that land admeasuring Acs.55.29 guntas in Survey No.49 of Dhamsalapuram Village, was in possession of their forefathers as tenants. The land originally was an Inam land, and by reason of the orders passed by the first respondent on 18.12.1960, the Inamdars and the occupants like the petitioners' forefathers were recognized as occupants of the land. Subsequently, the petitioners were allegedly in possession, and they also obtained passbooks under the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971. The third respondent herein initiated action against the petitioners under the Andhra Pradesh Land Encroachment Act, 1905 (for short 'the Act'), and issued a show cause notice under Section 7 of the Act. The same was challenged in W.P.No.1430 of 1996. This Court by an order dated 01.11.1997, gave liberty to the petitioners to submit explanations to the show cause notices and the third respondent was directed to dispose of the representations. Accordingly, the petitioners submitted their explanations claming long possession and right over the land. But, by proceedings dated 24.09.1998, the

Mandal Revenue Officer passed orders ordering eviction of the petitioners. The petitioners filed an appeal before the Revenue Divisional Officer, who also confirmed the orders of the Mandal Revenue Officer on 07.08.2003. The petitioners were also unsuccessful before the Joint Collector, who dismissed their revision petition on 16.08.2004. Not satisfied with the same, the petitioners again approached the first respondent, who dismissed the revision by impugned proceedings dated 30.09.2005.

The learned Counsel for the petitioners strenuously contends that the land is an Inam land. When the land was declared as unoccupied under the Andhra Pradesh (Telangana Area) Abolition of Jagirs Regulation of 1358 Fasli, the Inamdars agitated the matter before the Board of Revenue, who remanded the matter for fresh enquiry. Subsequently, the first respondent by order dated 09.10.1964, declared the Inamdars and the possessors of the land (forefather of the petitioners) as having valid title to the possession. Therefore, according to the learned Counsel, the petitioners cannot be treated as encroachers, and the orders passed by all the authorities without considering the proceedings at the behest of the Inamdars before the Board of Revenue as well as the first respondent are illegal and arbitrary.

Opposing the writ petition, the learned Assistant Government Pleader for Revenue (General) submits that as per the revenue records, the land to an extent of Acs.65.29 guntas was recorded as 'Gramasamohi' vested in the Government, and therefore, the petitioners were treated as encroachers, and not entitled to any right to continue in the land.

This Court has gone through the orders of the Joint Collector and the Commissioner. The same would reveal that the land admeasuring Acs.694.22 guntas in Survey No.49 of Dhamsalapuram revenue Village is Inam land. An extent of Acs.65.29 guntas of land was treated as Gramasamohi vested in the Government, and after coming into force of the Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955, no person was given any certificate as an occupant in respect of the said land. Therefore, necessary action is initiated, and under the provisions of the Act, and after considering the objections filed by the petitioners, they were treated as ineligible encroachers and they were ordered to be evicted. It also becomes clear that the petitioners are not landless poor persons, and their occupation of the Government land is objectionable. In that view of the matter, the order passed by the Mandal Revenue Officer, the original authority and confirmed by the appellate authority, first revisional authority as well as the second revisional authority are unexceptionable. After verifying the revenue records of the authorities, who have passed the orders, and even if the orders passed by the first respondent at the stage of enquiry under the Jagir Abolition and Regulation are not considered, the same does not in any manner result in the change of situation. Indeed, there is no denial of the fact that the land to an extent of Acs.65.29 guntas in Survey No.49 of Dhamsalapuram Village is registered as Gramasamohi land, which is vested in the Government.

It is nextly contended by the learned Counsel that long possession of the land

carries with it a presumption of title and therefore, the Government cannot resort to summary procedure for acquisition under the Act. Strong reliance is placed on the decision of the Supreme Court in **Govt. of A.P. V. T.Krishna Rao.** This court is not impressed with the submission. In **Govt. of A.P. V. T.Krishna Rao**'s case (supra), it was laid down that where there is genuine dispute of title, the Government cannot resort to summary evidence under the Act. The question of title in such cases must be decided in a properly constituted suit. It was held:

> The conspectus of facts in the instant case justifies the view that the question as to the title to the three plots cannot appropriately be decided in a summary enquiry contemplated by Sections 6 and 7 of the Act. The long possession of the respondents and their predecessorts-in-title of these plots raises a genuine dispute between them and the Government on the question of title, remembering especially that the property, admittedly, belonged originally to family of Nawab Habibuddin from whom the respondents claim to have purchased it. The question as to whether the title to the property came to be vested in the Government as a result of acquisition and the further question whether the Nawab encroached upon that property thereafter and perfected his title by adverse possession must be decided in a properly constituted suit.

In **Special Deputy Collector v. Konda Lakshman Bapuji,** a Division Bench of this Court observed:

> …The occupation of the property by the writ petitioners being open and for an appreciable length of time as observed by the Supreme Court can be taken *prima facie* to have a *bona fide* claim to the property requiring an impartial adjudication according to the established procedure of law. Since there is a *bona fide* dispute of title between the Government and the writ petitioners it must be adjudicated upon by the ordinary Courts of Law. The Government cannot decide such questions unilaterally in its own favour and evict them summarily on the basis of such decision…

A learned Single Judge of this Court in **Shivalingappa v. State of A.P.**, considered the decisions of the Supreme Court in **Govt. of A.P. v.**

T.Krishna Rao (supra) and another decision of this Court in **Special Deputy Collector v. Konda Lakshman Bapuji** (supra) and observed that these two decisions do not lay down any general law that whenever the persons sought to be evicted from the land claim their possession to be not unauthorized, the Government should be compelled to go to a Civil Court. It was also observed that when there is evidence that Government is in possession of the land, the Court must not conclude that the petitioner raised a *bona fide* claim about the possession.

In this case it is found by all the authorities, the land in Survey No.49 of Dhamsalapuram Village to an extent of Acs.65.29 guntas was treated and always remained as Gramasamohi land, which vested in the Government. Therefore, the possession of the petitioners besides being doubtful is also illegal, and in such a

matter, as held by this Court in **Shivalingappa v. State of A.P.**'s case (supra) the Government can never be compelled to go to Civil Court to get back the possession. In the considered opinion of this Court applying doctrine of public trust, it must be held that it is the duty of the Government to protect all public lands and it is for them to decide the method and manner of getting back possession of the land from encroachers of the land.

The Writ Petition is misconceived and devoid of merits, and accordingly dismissed. No costs.

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(V.V.S.RAO, J)

10.11.2005

Note: Issue C.C in one week.

B/o.

vs